

ACQUISITION ALERT 01-03

This Acquisition Alert notice is being transmitted to all NOAA Heads of Contracting Offices (HCOs). If you have any questions or comments about the Alert, please contact Helen Hurcombe by e-mail or by telephone on (301) 713-0836.

PLEASE DISSEMINATE THIS MESSAGE AS WIDELY AS POSSIBLE TO YOUR ACQUISITION STAFF, THE CUSTOMERS YOU PROVIDE ACQUISITION SERVICES TO AND YOUR PURCHASE CARDHOLDERS:

NEW FEDERAL ACQUISITION REGULATION—New FAR coverage is effective June 25, 2001. It implements Section 508 of the Rehabilitation Act and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards (Section 508). In order to maintain consistency between June 21, 2001, the effective date of the standards and the effective date of the FAR coverage, NOAA plans to comply with the Section 508 acquisition regulations on June 21, 2001.

WHAT ACQUISITIONS DO THESE NEW REGULATIONS APPLY TO?

- Contracts awarded on or after June 21, 2001
- Delivery or task orders against indefinite-quantity contracts issued after June 21, 2001 (includes Federal Supply Schedule contracts, governmentwide acquisition contracts, multi-agency contracts (MACs) and other interagency acquisitions).

WHAT IS SECTION 508?

Section 508 requires that when Federal departments or agencies develop, procure, maintain, or use Electronic and Information Technology (EIT), they must ensure that the EIT allows Federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by other Federal employees. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal department or agency, have access to and use of information and data that is comparable to that provided to the public without disabilities.

WHAT IS THE SCOPE OF THE SECTION 508 STANDARDS?

- Technical standards cover:
 - < software applications and operating systems;
 - < web-based internet and internet information and applications;
 - < telecommunications products;
 - < video and multimedia products;
 - < self-contained, closed products; and
 - < desktop and portable computers.

- Functional standards for:
 - < people with visual impairments;
 - < people who are deaf or hard-of-hearing;
 - < people with speech impairments; and
 - < people with motor impairments.
- Standards require:
 - < product support in alternate formats;
 - < descriptions of accessibility and compatibility features in alternate formats; and
 - < product support services in alternate communications modes.
(Alternate formats, usable by people with disabilities may include, but are not limited to, Braille, ASCII text, large print, recorded audio and electronic formats that comply with the applicable parts of Sec. 508 standards)
- Equivalent facilitation provision permits alternative means of providing access—“Nothing in this part is intended to prevent the use of designs or technologies as alternatives to those prescribed in this part provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.”
- Technical Assistance websites

WHAT DO “INFORMATION TECHNOLOGY” AND “EIT” MEAN?

“Information technology” means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(a) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency which -

(1) Requires the use of such equipment; or

(2) Requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(b) The term “information technology” includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(c) The term “information technology” does not include –

- (1) Any equipment that is acquired by a contractor incidental to a contract; or
- (2) Any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, are not information technology.

“Electronic and information technology” (EIT) has the same meaning as “information technology” except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).

HOW DOES THIS NEW REGULATION AFFECT ME?

Section 508 applies both to new acquisitions and existing contractual agreements already in place on June 21, 2001. Following are activities that must be accomplished for new and in-process acquisitions and for existing contractual agreements:

New Acquisitions – As a part of the acquisition planning process, a determination needs to be made for each acquisition as to whether Section 508 applies to the requirement or not. If the proposed acquisition is covered by Section 508, market research needs to be conducted to determine the availability of compliant products that will meet the needs of the requestor. Market research is necessary to support any determination of non-availability of compliant products and to support a determination of undue burden. As well, degree of compliance (e.g., do the products available meet only some of the standards rather than all) needs to be determined to assist in the development of the solicitation evaluation plan.

In-Process Acquisitions – For any acquisition currently in process that exceeds \$2,500 that is to be acquired on the open market or is to be placed under an existing GWAC, IDIQ, or FSS contract, where award will occur after June 21, 2001, a determination as to the applicability of Section 508 to the particular acquisition needs to be made. This will, possibly, require that the current solicitation be amended to incorporate these mandatory specifications.

Micropurchases – Micropurchases are exempt from the requirements of Section 508 until January 1, 2003. However, micropurchasers are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable. The micropurchase exception does not exempt all products that cost under \$2,500. **The exception is for a one-time purchase that totals \$2,500 or less, made on the open market rather than under an existing contract.** See the following examples:

- Acquisition of items, on the open market, where the total cost is more than \$2,500 but only a portion of the requirement is EIT and the cost of that portion is less than \$2,500 (e.g., a software package that costs \$1,800 is not a micropurchase if it is part of a \$3,000 purchase or a part of a \$3,000,000 purchase) - MUST BE PROCESSED AS A SEC. 508 ACQUISITION
- Order of EIT against a GWAC, FSS or IDIQ contract using the purchase card and the total cost does not exceed \$2,500 - MUST BE PROCESSED AS A SEC. 508 ACQUISITION

Existing Contractual Agreements – For all NOAA IDIQ contracts and Blanket Purchase Agreements, determinations will need to be made as to whether they are for EIT. If it is determined that the product/service to be provided under these contractual agreements are EIT, determinations will need to be made, through discussions with the Contractor, as to whether the products/services offered are Sec. 508 compliant and to what degree they are compliant. For any existing contractual agreement, this determination will need to be made periodically throughout the remainder of the period of the contract. If the contractual agreements do not offer fully compliant products/services and compliant products/services are available in the market place, a determination of undue burden would need to be made to continue to place orders against the existing contractual agreement.

This same type of determination will need to be made prior to placing any order (regardless of dollar value or purchase mechanism (delivery order or purchase card) against a Federal Supply Schedule contract.

As existing contractual agreements are identified that include noncompliant products/services, decisions will need to be made regarding the feasibility and appropriateness of modifying the existing agreement/contract to provide compliant products/services. These decisions will need to be made on a case-by-case basis and will need to include both the cognizant COTR/Program Officer and the Contract Specialist/Contracting Officer.

WHAT ARE THE SPECIAL RULES THAT APPLY TO INDEFINITE QUANTITY, INDEFINITE DELIVERY CONTRACTS?

Exception determinations are not required for award of the underlying indefinite quantity contracts, except for requirements that are to be satisfied by the initial award (e.g., if the contract specifies a guaranteed minimum, that minimum quantity must either meet one of the exceptions or be Sec. 508 compliant).

Indefinite quantity contracts may include non-compliant items, provided that any task order or delivery order issued for non-compliant EIT meets an applicable exception.

Contracting Officers that award indefinite quantity contracts must indicate to ordering offices which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (e.g., vendor's or other exact web page location).

HOW DO I COMPLY "TO THE MAXIMUM EXTENT PRACTICABLE?"

When purchasing EIT, ask the vendor if the offered product is Section 508 compliant. If the answer is no, ask the vendor if an equivalent compliant product is available. Purchase the compliant product unless you determine the price is unreasonable.

ARE THERE ANY EXCEPTIONS?

The Access Boards EIT standards at 36 C.F.R. part 1194 do not apply to—

- Micropurchases (acquisitions totalling <\$2,500 acquired using the government-wide purchase card purchased on the open market) prior to January 1, 2003
- EIT for a national security system
- EIT acquired by a contractor incidental to a contract (e.g., the contractor purchases a word processor to generate reports required by the contractor)
- EIT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment
- EIT that would impose an undue burden on the agency

Exception determinations must be made prior to contract award, except for indefinite quantity contracts.

This regulation applies to acquisitions from mandatory sources of supply (e.g., Committee for Purchase from People Who are Blind or Severely Disabled and Federal Prison Industries (UNICOR)). Specifically, to purchase a non-compliant item from one of these mandatory sources, you would need to meet one of the exceptions.

WHAT IS UNDUE BURDEN?

The definition of undue burden is based on case law under disability law. Undue burden must be documented. When there is an undue burden, the statute requires an alternative means of access to be provided to individuals with disabilities.

The basis for undue burden is:

- difficulty or expense of compliance; and
- agency resources available to its program or component for which the supply or service is being acquired.

Undue burden must be documented in writing by the requiring official, approved in accordance with agency procedure, and be maintained in the contract file.

If an agency determines an acquisition would impose an undue burden, the agency must provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.

IS COMPLIANCE TESTING AVAILABLE?

It is the responsibility of the requestor to determine compliance. Currently, there is no uniform compliance testing available. There is an industry-led, government-sponsored program, Accessibility for People with Disabilities through Standard Interoperability and Testing (ADIT), that is working on this. Latest information on their efforts can be found on the Section 508 website.

WHAT ABOUT EIT THAT IS COMPLIANT WITH SOME OF THE STANDARDS BUT NOT ALL OF THEM?

Individual standards that cannot be met must be documented by the requiring official with a copy to the contract file. If products are available that meet some, but not all applicable standards, agencies cannot claim a product as a whole is nonavailable just because it does not meet all of the standards.

ARE THERE ANY SPECIAL PROVISIONS THAT APPLY TO COMMERCIAL ITEMS?

When acquiring commercial items, an agency must comply with those accessibility standards that can be met with supplies and services available in the commercial marketplace in time to meet the agency's delivery requirements

When acquiring commercial items, an undue burden determination is not required to address individual standards that cannot be met with supplies or services available in the commercial marketplace in time to meet the agency delivery requirements. Nonavailability, however, must be documented by the requiring official; documentation must include a description of the market research conducted and what standards cannot be met and must be maintained in the contract file.

WHAT DO I NEED TO CONSIDER AS I DEVELOP A NEW REQUIREMENT?

- The requiring official must identify which standards apply to the specific acquisition.
- The requiring official must perform market research to determine the availability of compliant products and services (vendor and Section 508 websites are good starting points).
- The requiring official must then identify which standards, if any, would not apply to the acquisition because of , for example, nonavailability (FAR 39.203) or undue burden (FAR 39.204(e)), prepare necessary documentation of such determinations and obtain agency-required approvals.
- The requiring official should then develop specifications and minimum requirements based on the results of the market research conducted and agency needs.
- Submit the specifications/minimum requirements developed and any applicable exception or undue burden determinations to the servicing acquisition office with the purchase requisition (CD-435)
- As the acquisition proceeds forward towards award, it may become necessary to reconsider the need for an exception based on the information obtained through the proposal submission process.

WHERE CAN I FIND OUT MORE ABOUT SECTION 508 AND WHAT THE ACCESSIBILITY STANDARDS ARE?

- To learn more about Section 508, go to <http://www.section508.gov>
- To find out what the accessibility standards are, go to <http://www.access-board.gov/news/508-final.htm> and click on Chapter 2, Description of Standards
- For NOAA specific information and links to additional Section 508 information go to NOAA's Section 508 website, <http://www.rdc.noaa.gov/~irm/#4>

- Technical assistance websites:
<http://www.ittatc.org>
<http://www.gsa.gov>
<http://www.disAbility.gov>
<http://www.ed.gov/offices/OCR>

ATTACHMENTS:

1. Memorandum for Heads of Contracting Offices
2. NOAA Section 508 Standards Checklist and Assessment Certification Form
3. Guidance and Tools
 - a. Summary of Suggested Documentation Tools
 - b. Section 508 Determination and Findings for Purchase Requests (short and long versions)
 - (i) Attachment A - EIT Commercial Non-Availability Certification (short and long versions—long version provides direction and guidance)
 - (ii) Attachment B - EIT Undue Burden Exception Determination and Certification
 - (iii) Attachment C - Section 508 Decision Tree for Procurement Requestor Processing
 - c. Suggested Language for Inclusion in Solicitations and Contracts
 - d. Guidance for Indefinite Delivery, Indefinite Quantity Contracts
 - e. Sample Solicitation Section M Section 508 Technical Evaluation
4. NOAA Approval Requirements